19 41-42 **K** **File No.** Fed. Cl-B/41-42

Legal DEPARTMENT

B BRANCH

9M 2/6

Subject:—

Federal Courts:—

Appearance of

Advocate General.

P21

File No. Fed. Cl-B/41-42

Std. Sectt. Slip 24 B e.

499-B

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1. The question which arises by reason of the Judgement of the Madras High Court is in substance the question whether the first tax on the sale of goods can be said to e a duty of excise within Entry 45 ~~of~~ in the Federal Legislative List.

2. Our Sales Tax Act (Act V of 1939) is different ~~from~~ in its scheme and scope from the Ma'ras Act. When enacting our Act, the decision in 38 Commonwealth Law Reports 408 mentioned in the Madras Judgment was considered and a proviso was enacted to section 3 which provides that the tax shall not be levied on the sale of any goods by a manufacturer, producer or importer except on retail sale of goods. The Madras Act imposes the tax on the turnover of dealers whereas in our Act the tax is levied specifically o the sale of any kind of goods. A decision therefore given on t e term s of the Madras Act would nt be v ery helpful in regard to questions that may arise in reference to the Bombay Act.

3. However if the view of the Madras Government i s accepted, it undoubtedly would enlarge the sphere of taxation open to the Provinces, in as much as, all Provinces would be able to levy taxes on the first sales of goods. To this extent Bombay is undoubtedly interested in supporting the Madras view.

4. Judging from the Federal Court Reports, it appears that other Provinces have from time to time appeared in the Federal Court in support of the legislation enacted by sister Provinces with a view to uphold an maintain a larger sphere of taxation for the Provinces. From this point of view it wo ld be advisable for Bombay to put in an appearance under O. 36 R.2 of the Federal Court Rules.

Such an appearance will involve a substantial amou t of costs.

Sd/- M.I.Setal'vad.
21/1/42
Advocate General.

PSM. 4/5
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Office of the R.L.A.

The Advocate General waw consulted. A copy of his note dated the 21st January 1942 is sent herewith.

2. It does not appear necessary to ask the Advocate General to put in an appearancer in view of the fact that the decision of the Federal Court given on the terms of the Madras Act would not be, as stated by him, very helpful in regard to the questions that may arise in reference to the Bombay Act. Moreover such appearance, as pointed out by him, will involve a substantial amount of costs. An approximate idea of the costs likely to be incurred for such appearance can be had from the Advocate General's note dated the 12th February 1942 (Copy appended) recorded by him or a reference from the Revenue Department in connection with the Bihar Prohibition case before the Federal Court.

Id/- P.N.M.
17/2

Remembrancer of Legal Affairs.

U.R.to F.D., No. 1463, dated the 18th February 1942.

PSM. 4/5

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Office of the R.L.A.

The question raised in this appeal viz. the power of the Provincial Legislature to legislate in regard to prohibition is doubtless one which vitally affects this Government also. The very question was raised before the High Court of Bombay in the case of Emperor vs. Saver Manual Dantes I.L.R. (1940) p.777 and the High Court has expressed an opinion in that case that it is beyond the powers of the Provincial Legislature to pass a law prohibiting the possession of intoxicants in such a way as to encroach upon the right to import and export across the customs frontier, a matter falling within the Federal Legislative List. The views expressed by the High Court in that case are however obiter and the question has not yet been finally decided. Attention in this connection is invited to R.L.A.'s opinion No. 10524 dated 8th December 1941 As stated therein, it is possible that the Federal Court may in this appeal give its ruling on this question and such a ruling would be of great value to this Province in connection with its power of legislation. It would therefore be desirable to ask the Advocate General, Bombay, to intervene in the proceedings on behalf of this Province.

Id/- P.N.M.
12/1

Remembrancer of Legal Affairs.

U.R. to R.D..No..314 dated the 12th January 1942.

3M. 4.5
6 4C.

Legal Department.

The Advocate General is requested to favour Government with his opinion whether he thinks it necessary or desirable that he should interveno on behalf of the Government of Bombay in the appeal before the Federal Court against the judgement of the Patna High Court convicting one Bhola Prasad under section 47(a) of the Bihar and Orissa Excise Act, 1915.

Sd/- B.N.Moos.

Secretary to Government,
Legal Department.

U.R.to Adv. General, No. 461, dated 17th January 1942.

PSM. 4/5
4C.

It appears from the judgment of the Patna High Court that the questions raised in Bombay, and in reference to which the High Court of Bombay, having expressed an opinion, would not give leave to appeal to the Federal Court, viz: whether the Provincial Government has power under Entry 31 in the Provincial List to prohibit the possession of intoxicants absolutely and whether such prohibition encroaches upon the rights of the Central Government in regard to import and export across the customs frontiers will not arise for disposal in the Federal Court. These points were not raised by the Appellant before the High Court and have not been raised in his grounds of appeal to the Federal Court. The appellant cannot under O. 12 R.5 of the Federal Court Rules rely on any ground other than those specified in his petition of appeal except by special leave. These grounds have probably not been raised because of the difference in circumstances between Patna and Bombay, the conditions in Bombay by reason of its being the chief Port in India not existing in the case of Patna. The Bombay decision has not been referred to in the Patna judgment. The decision therefore by the Federal Court in the Patna Appeal will not necessarily dispose of the points which arose in the Bombaycase.

In the Patna Appeal however the Appellant does raise the question as to whether the Provinces have the power to introduce total prohibition. The High Court refused to deal with this question in as much as in the Notification before them only certain areas of the Province were involved. The Federal Court may, similarly refuse to dealwith this larger question.

In as much as this larger question will be raised and an attempt may be made to obtain a decision on it. it would be in the interest of the Province of Bombay which has introduced partial prohibition to try and establish its right to introduce total prohibition if and when it considers necessary to doso.

PSM. 4/5

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As I have pointed out in the Madras matter, the intervention by the Advocate General on behalf of the Province of Bombay, will mean substantial costs to the Province.

Sd/- M.I.Setalvad.
21/142

Advocate General.

P.SM. 4/5

4C

With reference to his remarks in the last paragraph of his opinion dated 21st January 1942 at page 15ante regarding substantial costs, the Advocate General is requested to state what in his opinio would be the approximate cost to the Bombay Government if he is asked to appear in this x case before the Federal Court on behalf of this Government.

Sd/- P.N.Moos

Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay, No. 1084, dated the 5th February 1942.

PSM. 4/5

4C

As a result of inquiries I understand that even in cases in which the Advocate General of a Province applies to be heard and is heard by the Federal Court under O. 36 rule 2 of its rules, he has to appear instructed by an Agent as in the case of an Advocate appearing for a party before the Federal Court and all the Court fees have to be paid. If this is so, the Court fees and the Agent's fees payable in a matter which might take two or three days to hear would, I understand, be about Rs. 2000/- or Rs. 3000/-. In addition to this, there will be fees payable to the Advocate General. The fees ordinarily charged by me for work outside Bombay is 100Ł Gold Mohurs per day. These fees however would be a matter of adjustment between Government and the Advocate General. I do not know how the matter has been dealt with in regard to the fees of the Advocate General in other Provinces.

I hope this gives the Government some idea as to the cost likely to be incurred.

The matter was delayed by reason of the inquiry which had be made.

Sd/-M.I.Setalwad.

12/3/42

Advocate General.

PSM. 4/5

4C

GOVERNMENT OF SIND.
LEGAL DEPARTMENT,
Sind Secretariat,

No. S-28-L/41/VI

Karachi, 6th February 1942.

From

Tikamdas, D. Motwani, Esquire, B.A.LL.B.,
Deputy Secretary to the Government of Sind.

To

The Secretary to the Government of Bombay,
Legal Department, Bombay,.

Subject;- Prohibition legislation.

Sir,

I am directed to state that an appeal has been filed in the Federal Court of India against the judgment of the Patna High Court, ~~of~~ convicting one Bhola Prasad under section 47A of the Bihar and Orissa Excise Act, 1915. A copy of the memorandum of appeal has been communicated to this Government by the Government of Madras and possibly it has been communicated to the Government of Bombay as well. The question raised in the appeal relates to the power of the Provincial ~~the~~ legislature to legislate in regard to prohibition and is of general interest. The Government of Madras have consequently instruct-ed their Advocate-General to intervene in the proceedings on their behalf and support the judgment of the Patna High Court. I am to inquire the whether the Government of Bombay, also intend to oppose the appeal the favour of an early reply is requested.

I have the honour to be,

Sir,

Your most obedient Servant,

Sd/-

Deputy Secretary to Government.

Sd/-

6/2/42.

PSM. 4/5

4C

No. 1 04 Legal Departm nt.

Bombay Castle, 24th February 1942.

From R

P.N.Moos, Esquire, Bar-at-Law, I.C.S.,

Secretar ' to the Government of Bombay;

To

The Deputy Secretary to the Government of Sind, Legal Department, KARACHI.

Subject:- Prohibition Legislation.

Sir,

With reference to your letter No. S-28-L/41, IV, dated the 6th February 1942, on the above subject, I am directed to state that as the appeal before the Federal Court against the judgment of the Patna High Court convicting one Bhola Prasad under section 47 (a) of the Bihar and Orissa Excise Act, 1915, has already been heard by the Federal Court, the question of instructing the Advocate General, Bombay, to intervene on behalf of the Government of Bombay in the said appeal has been dropped.

I have the honour to be,

Sir,

Your Most obedient servant,

S.D.P.

For Secretary to the Government of Bombay,

Legal Department.

PSM. 4/5

4C

Legal Department.

With reference to his note dated 13th April 1942 the Advocate General is informed that Government has finally decided that the Advocate General, Bombay, need not put in an appearance in the Federal Court in the appeal to that Court against the decision of the Madras High Court on the validity of the Madras General Sales Tax Act, 1939.

Id/-N.K.D.
15/4

For Secretary to Government.

U.R.to Advocate General, No. 3271, dated the 16th April 1942.

PSM. 4/5

4C DVP 16-5

16/5